



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0087; FRL-10672-01-R9]

Air Plan Revisions; California; Mojave Desert Air Quality Management District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from industrial, institutional, and commercial boilers, steam generators, and process heaters. We are proposing a limited approval of a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act) because the rule would strengthen the current SIP-approved version of MDAQMD's rule. We are proposing a limited disapproval of this revision because it is inconsistent with the EPA's startup, shutdown, and malfunction (SSM) policy and Credible Evidence Rules. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0087 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the

local air agency and submitted by the California Air Resources Control Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
MDAQMD	1157	Boilers and Process Heaters	01/22/18	05/23/18

On November 23, 2018, the submittal for MDAQMD Rule 1157 was deemed complete by operation of law pursuant to CAA section 110(k)(1)(B) and 40 CFR Part 51 Appendix V.

B. *Are there other versions of this rule?*

We approved an earlier version of Rule 1157 into the SIP on April 20, 1999 (64 FR 19277). The MDAQMD adopted revisions to the SIP-approved version on January 22, 2018, and CARB submitted them to us on May 23, 2018. In its submittal letter, CARB requested that, upon approval of the revised version of Rule 1157, the EPA remove the old version of this rule from the MDAQMD SIP. If we take final action to approve the January 22, 2018 version of Rule 1157, this version will replace the previously approved version of this rule in the SIP.

C. *What is the purpose of the submitted rule revision?*

Emissions of nitrogen oxides (NO_x) contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x emissions. Submitted Rule 1157 establishes emission limits of NO_x and carbon monoxide (CO) for boilers, steam generators, and process heaters (units) with rated heat inputs of greater than or equal to 5 million Btu per hour (MMBtu/hr). In the District's Reasonably Available Control Technology (RACT) SIP for the 2008 ozone National Ambient Air Quality Standards (NAAQS), the District concluded that Rule 1157 did not meet current RACT and acknowledged the need to revise the rule, including the limits for NO_x, in order to implement RACT.¹ Rule 1157 is applicable to new

¹ The EPA conditionally approved the District's RACT SIP for major NO_x sources for the 2008 ozone NAAQS, based on the District's commitment to remedy deficiencies in a set of different NO_x rules, including Rule 1157. 83 FR 5921 (February 12, 2018). Because the EPA has not yet taken final action addressing each of the additional NO_x

and existing boilers, steam generators, and process heaters within the Mojave Desert portion of the West Mojave Desert ozone nonattainment area.² The updated rule lowers the NO_x emission limit for gaseous fuels to 30 ppmv, 0.036 lbs/MMBtu of heat input, and lowers the NO_x emission limit for liquid fuel to 40 ppmv, 0.052 lbs/MMBtu of heat input. The EPA's technical support document (TSD), which is available in the docket, has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, SIP rules require RACT for each major source of NO_x in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The MDAQMD regulates an ozone nonattainment area classified as Severe-15 for the 1997, 2008, and 2015 8-hour ozone national ambient air quality standards (40 CFR 81.305). Therefore, this rule must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

rules subject to the conditional approval, we intend to address our conditional approval of the major NO_x RACT source category in a separate rulemaking once we have taken action on all of the applicable NO_x rules.

² See 40 CFR 81.305.

4. “NOx Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” EPA453/R-94-022, March 1994.
5. “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,” CARB, July 18, 1991.
6. “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33839 (June 12, 2015).
7. “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” EPA, October 9, 2020.
8. “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” EPA, September 30, 2021.
9. MDAQMD Rule 1157, Boilers and Process Heaters, as amended on May 19, 1997, and approved into the SIP on April 20, 1999 (64 FR 19277).

B. *Does the rule meet the evaluation criteria?*

Rule 1157 strengthens the SIP by establishing more stringent emission limits and by clarifying monitoring, recording, and recordkeeping provisions. The District has addressed all of the deficiencies identified with Rule 1157 in our 2018 conditional approval action.³ The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Rule 1157 strengthens the SIP, most substantially by tightening RACT emission limits for gas fired units from 70 ppmv to 30 ppmv and eliminating emission limits and definitions for solid fueled operations entirely, so that applicable units may only fire on gas or

³ 83 FR 5921.

liquid fuels. Rule 1157 is at least as stringent as the EPA's 1994 ACT document⁴, CARB's RACT/BARCT guidance⁵ and analogous California District rules for this category. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

EPA is proposing to determine that the following provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision, for reasons described here and explained in further detail in the TSD.

1. As described in greater detail in our TSD, section (E)(1)(b)(iii) of the Rule provides that “[n]o compliance determination shall be established based on data obtained from compliance testing, including integrated sampling methods, during a start-up period or shut-down period.” This is not consistent with the EPA's SSM policy and Credible Evidence Rule because it forbids the use of credible evidence (compliance testing data generated during startup and shutdown periods) in establishing violations of the applicable emissions limit. In addition, the rule revision removed the definitions of “start-up period” and “shut-down period,” making the scope of this provision unclear.

D. The EPA's recommendations to further improve the rule

The TSD includes recommendations for the next time the local agency modifies the rule. These recommendations are not the basis of our proposed limited disapproval.

E. Public comment and proposed action

As authorized in section 110(k)(3) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule because although it fulfills most of the relevant CAA requirements, it also contains the deficiency listed in Section II.C of this document. We

⁴ EPA, “NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” EPA453/R-94-022, March 1994.

⁵ CARB, “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,” July 18, 1991.

will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the *Federal Register***]. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve a subsequent SIP revision that corrects the deficiencies identified in our evaluation.

In addition, finalizing this limited disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rule has been adopted by the MDAQMD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: <https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Mojave Desert Air Quality Management District Rule 1157, Boilers and Process Heaters, amended on January 22, 2018, which regulates NO_x and CO emissions from industrial, institutional, and commercial boilers, steam generators, and process heaters. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person

identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental

effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action limitedly approves and limitedly disapproves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: **March 18, 2023.**

Martha Guzman Aceves
Regional Administrator,
Region IX.

[FR Doc. 2023-06143 Filed: 3/24/2023 8:45 am; Publication Date: 3/27/2023]